IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2462 of 2005

Between:

1 D.K. Chaitanya, D/o. D. Kamalakar Babu,
R/o. Kolavennu Village , Kankipadu Mandal, Krishna District.
2 D. Arun Jayanthi, S/o. D. Kamalakar Babu,
R/o. Kolavennu Village , Kankipadu Mandal, Krishna District.
3 D.P. Prinyanka, D/o. Kamalakarbabu,
R/o. Kolavennu Village , Kankipadu Mandal, Krishna District.

..... PETITIONERS

AND

1 Syndicate Bank, Anigandlapadu Branch, Rep. by its Manager,
Penuganchiprolu Mandal, Krishna District.
2 The Authorised Officer, Syndicate Bank Regional Office,
Vijayawada, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, Order or direction, more particularly one in the nature of Writ of Certiorari by calling for the records leading up to issuing of the notice of Sale dated 02-02-2005 by inviting tenders in respect of Residential Building (RCC) Located at Door No. 12-3 Extent 242 Sq. Yards at R.S.No. 14/3, Block No. 12, lal Bahadur Sastry Nagar, Kankipadu Village issued by the 2nd Respondent Authorised Officer, Syndicate Bank, Regional office, vijayawada and quash the same by holding it as arbitrary, illegal and unconstitutional.

Counsel for the Petitioners: MR.Y.SUBRAHMANYAM

Counsel for the Respondents: MR.A.KRISHNAM RAJU

The Court at the admission stage made the following :

O R D E R:

This writ petition is filed challenging the sale notice dated 02-02-2005 issued by the respondent-Bank for sale of the house bearing Door No.12-3 situated in R.S.No.14/3, Block No.12, Lal Bahadur Sastry Nagar, Kankipadu Village.

It is not in dispute that the said notice has been issued in exercise of the powers under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'). If that be so, under Section 17 of the Act, an efficacious alternative remedy is available by way of appeal and without exhausting the said remedy, the petitioners cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

However, the learned counsel for the petitioners contends that the petitioners were not parties to the decree obtained by the respondent Bank against the father of the petitioners, and therefore, the remedy of appeal as provided under Section 17 of the Act is not available to them.

I am unable to agree with the said contention. Sub-Section (1) of Section 17 of the Act clearly states that any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date of which such measures had been taken.

Hence, I am of the view that it is not open to the petitioners to invoke the writ jurisdiction under Article 226 of the Constitution of India without exhausting the alternative remedy of appeal as available under Section 17 of the Act.

The writ petition is accordingly disposed of granting leave and liberty to the petitioners to work out the alternative remedy as available under the law. No costs.

_____

(**G. ROHINI, J**)

Date: 16-02-2005

ghn

To

1 The Manager, Syndicate Bank, Anigandlapadu Branch,
Penuganchiprolu Mandal, Krishna District.
2 The Authorised Officer, Syndicate Bank Regional Office,
Vijayawada, Krishna District.

3 Two CD copies.